

Herbert A. Viergutz, Esq.
Barokas Martin & Tomlinson
1029 West Third, Suite 280
Anchorage, AK 99501
Phone: (907) 276-8010
Facsimile: (907) 276-5334

Attorneys for United States Fidelity and Guaranty Company

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF ALASKA AT ANCHORAGE**

UNITED STATES OF AMERICA for the use of NORTH
STAR TERMINAL & STEVEDORE COMPANY, d/b/a
NORTHERN STEVEDORING & HANDLING, and NORTH
STAR TERMINAL & STEVEDORE COMPANY, d/b/a
NORTHERN STEVEDORING & HANDLING, on its own
behalf,

Plaintiffs,

and

UNITED STATES OF AMERICA for the use of SHORESIDE
PETROLEUM, INC., d/b/a MARATHON FUEL SERVICE,
and SHORESIDE PETROLEUM, INC., d/b/a
MARATHON FUEL SERVICE, on its own behalf,

Intervening Plaintiffs,

and

METCO, INC.,

Intervening Plaintiff,

vs.

NUGGET CONSTRUCTION, INC.; SPENCER ROCK
PRODUCTS, INC.; UNITED STATES FIDELITY AND
GUARANTY COMPANY; and ROBERT A. LAPORE,

Defendants.

No. 3:98-cv-9 (TMB)

AFFIDAVIT OF COUNSEL

BAROKAS MARTIN & TOMLINSON
1029 West Third, Suite 280
Anchorage, Alaska 99501
Phone: (907) 276-8010
Fax: (907) 276-5334

1
2
3 STATE OF ALASKA
4 THIRD JUDICIAL DISTRICT } ss.

5 Herbert A. Viergutz, being first duly sworn upon oath, deposes and states as follows:

6 1. I am counsel of record for USF&G, in the above captioned matter.

7 2. The Court requested schedules from counsel in order to establish a Trial date in this
8 matter, after the Court vacated the February 5, 2007 Trial date. The undersigned
9 forwarded his schedule to the Court indicating he was available for Trial anytime in
10 February; the entire month of March (excepting the week of March 19, 2007); and the
11 entire month of April. Counsel indicated he was available the first week in May, but was
12 absolutely and with certainty unavailable the week of May 14, 2007.

13 3. Nevertheless, the Court established the Trial date of May 7, 2007.

14 4. The undersigned then filed a Notice with this Court of unavailability the week of May
15 14, indicating that his client would be substantially prejudiced by the May 7, 2006 Trial
16 date, since the undersigned would be unable to attend Trial the week of May 14, 2007 in
17 the event Trial was not completed during the course of the week of May 7, 2007.

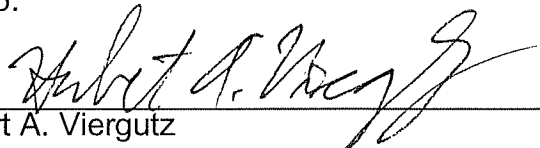
18 5. The undersigned has an absolute, certain, and definite commitment to be outside
19 the Anchorage area during the week of May 14, 2007, and will be unable to attend Trial
20 that week in the event Trial is not concluded during the course of the week of May 7, 2007.
21 As a result, his client would be substantially prejudiced should the Trial not be completed
22 the week of May 7, 2007, which it most probably will not be.

23
24
25
26
27
28
BAROKAS MARTIN & TOMLINSON
1029 West Third, Suite 280
Anchorage, Alaska 99501
Phone: (907) 276-8010
Fax: (907) 276-5334


6. As a result of the above, the undersigned respectfully requests the Court to vacate the Trial scheduled for May 7, 2007, and schedule this matter at a mutually convenient date and time.

FURTHER YOUR AFFIANT SAYETH NAUGHT.

Dated this 14 day of December, 2006.


Herbert A. Viergutz

SUBSCRIBED AND SWORN TO before me this 14 day of December, 2006.


Notary Public in and for Alaska
My Commission Expires: 11-17-10

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of this document was served by electronic notification on this 14th day of December, 2006, to:

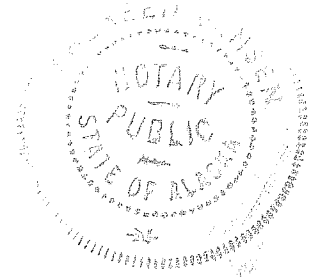
Michael W. Sewright, Esq.
Burr, Pease & Kurtz
810 N Street
Anchorage, AK 99501

Paul Stockler, Esq.
1309 West 16th Avenue
Anchorage, AK 99501

Tom Krider, Esq.
Traeger Machetanz, Esq
Oles Morrison Rinker & Baker, LLP
745 4th Avenue, Suite 502
Anchorage, AK 99501-2136

Steven J. Shamburek, Esq.
Law Office of Steven J. Shamburek
425 G Street, Suite 630
Anchorage, AK 99501-5872

/s Herbert A. Viergutz



BAROKAS MARTIN & TOMLINSON
1029 West Third, Suite 280
Anchorage, Alaska 99501
Phone: (907) 276-8010
Fax: (907) 276-5334